

WASHINGTON STATE GAMBLING COMMISSION

**COMMISSION MEETING
THURSDAY, AUGUST 12, 1999
MINUTES**

Chairperson Ludwig called the meeting to order at 1:35 p.m., at the Westcoast Silverdale Hotel. Chair Ludwig introduced the members of the Commission and staff present.

MEMBERS PRESENT: **CURTIS LUDWIG, Chairperson;**
 MARSHALL FORREST, Vice Chairperson;
 LIZ McLAUGHLIN;
 PAT HERBOLD, and
 Ex Officio Members SENATOR MARGARITA PRENTICE,
 SENATOR SHIRLEY WINSLEY, and
 REPRESENTATIVE ALEX WOOD

OTHERS PRESENT: **BEN BISHOP, Executive Director;**
 ED FLEISHER, Deputy Director of Policy and Governmental Affairs;
 SHERRI WINSLOW, Deputy Director of Operations;
 CALLY CASS-HEALY, Assistant Director of Field Operations;
 TERRY WESTHOFF, Special Agent;
 ROBERT BERG, Assistant Director, Special Operations;
 AMY PATJENS, Manager, Communications and Legal Department;
 DALLAS BURNETT, Special Agent
 JONATHAN McCOY, Assistant Attorney General; and
 SHIRLEY CORBETT, Executive Assistant.

1. LICENSE APPROVALS

New Licenses, Changes, and Tribal Certifications:

Commissioner Forrest made a motion seconded by **Commissioner Herbold** to approve the new licenses, changes, and tribal certifications as listed in the agenda packet pages one through 23. Vote taken; motion carried with four aye votes.

2. REVIEW OF FRIDAY'S AGENDA

Amy Patjens, Manager, Communications and Legal Department reported there would be three staff reports presented on Friday: 1) agency requested legislation, 2) DSHS child support legislation to revoke gambling licenses for someone who has had an order entered against them for child support, and 3) a report on the recent local jurisdiction moratoriums and bans.

Other items for discussion relate to two sets of rules up for final action. One is the established business rule that has been discussed for the last four months, and two public disclosure rules. Two rules up for discussion and possible filing relate to rules dealing with promotional contests of chance. They were discussed last month, however, the Commission deferred voting on whether to file them or not until this month. There are housekeeping changes relating to the age limit to participate in gambling activities.

The last item will be a discussion regarding the Attorney General's opinion on whether charitable organizations may conduct video pull-tabs.

Today's agenda contains four card rooms for approval for Phase I Operations and Assistant Director **Cally Cass-Healy** explained that Slo-Pitch had been held over from July because they were not completely ready, and were therefore added to the existing August approval list.

3. **GROUP V QUALIFICATION REVIEWS:**

Puget Sound Music Society, Tacoma:

Terry Westhoff, Special Agent, highlighted the qualification review data. The organization was formed as an educational organization and provides programs that promotes musical organizations and a grant program to other non profit organizations. The organization met its net return for their Class I Bingo license. There are no pending administrative charges as of this date. Based on the review, staff recommends approval.

Commissioner Forrest addressed the fact that the use of 2080 scheduled work hours per year does not present a realistic picture, considering personnel take vacations and other leave. **Director Bishop** explained the 2,080 hour figure was selected so that staff would have a standard figure to compute FTE's, and because 2080 represented a full time position.

Commissioner Herbold made a motion seconded by **Commissioner McLaughlin** to approve Puget Sound Music Society located in Tacoma as an educational organization, and be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion carried with four aye votes.*

Big Brothers of King County, Kirkland:

Terry Westhoff highlighted the qualification review data. The organization was formed as a charitable entity to provide programs matching male volunteers with boys aged 7 to 17 to provide positive adult role models. Services have been provided to approximately 2,463 clients during the year. The organization met their net return for a Class M license. There are no pending administrative charges against the organization, and staff recommends approval.

Carlene Day, Assistant Gambling Manager, thanked the Commission for their support. She said Big Brothers/Big Sisters of King County merged in January of 1999, and noted that Big Brothers/Big Sisters of King County was benefiting from Big Brothers Bingo and serving many more children.

Commissioner McLaughlin made a motion seconded by **Commissioner Herbold and Forrest** to approve the Big Brothers of King County as a charitable organization, and be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion carried with four aye votes.*

Whatcom County Crisis Services, Bellingham:

Terry Westhoff highlighted the qualification review data. The organization was formed as a charitable organization to provide personal services such as crisis intervention programs, domestic violence programs, abuse-control training, and a sexual assault program. They served approximately 18,500 clients during the last year. The organization did not meeting their net return for its Class K Bingo license; however, they applied and have been approved for participation in the moratorium. So far this year, they are meeting their net return. There are no pending administrative charges as of this date and staff recommends approval.

Kathleen Marshall, Executive Director, noted that as of January, the organization discontinued their 20-year, 24-hour crisis line. They made a difficult decision to refocus on domestic violence and sexual assault programs because these two programs were of greater need to the community. Between 1997 and 1998, the organization lost approximately \$690,000 in gross revenue from bingo, and they are still seeing a downward trend. Ms. Marshall reported that in September, a riverboat casino will open in Vancouver, Washington. It is predicted that 5,000 to 7,000 people a day will visit this attraction. She urged the Commission to keep in mind that the services they provide are critical for the county.

Commissioner Herbold inquired about the 24-hour crisis line. **Ms. Marshall** explained calls pertain to everything from suicide to emergency housing. **Commissioner Herbold** asked if they still maintained a crisis line for domestic violence and sexual violence. **Ms. Marshall** affirmed and noted that in Everett, Volunteers of America Care Crisis have been providing mental health crisis line services to Whatcom County.

Commissioner Forrest made a motion seconded by **Commissioner McLaughlin** to approve the Whatcom County Crisis Services located in Bellingham as a charitable organization, and be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion carried with four aye votes.*

4. **DEFAULT HEARING – REVOCATION OF GAMBLING LICENSE:**

Doumani Enterprises, Inc., d/b/a Viking Tavern, Spokane

Melinda Froud, Staff Attorney, reported that this organization originally applied for a punch board pull-tab licensed activity. She reviewed shareholder information. **Ms. Froud** noted that when the corporation submitted a renewal application last year, the form indicated that two of the shareholders no longer had shares. Commission staff learned that in September of 1997, Mr. and Ms. Snover sold their interest to Mr. and Ms. Randazzo for \$42,500. After the licensee submitted the proper notification of the change of stock ownership form, it was noticed that the source of funds information was missing with regard to the purchase of the additional 33 percent stock. Agents sent several letters to Mr. Randazzo requesting the source of funds information. No information was ever received. The Director issued administrative charges for revocation and the licensee failed to request a hearing within the prescribed time. Subsequently, Mr. Randazzo confirmed he had received the charges and that he understood he had forfeited his license because he had not requested a hearing, and did not wish to do so now. Staff recommended that Doumani Enterprises, Inc.'s gambling license be revoked pursuant to WAC 34-05-440.

Commissioner Ludwig asked if Mr. Randazzo would still own the tavern, but no longer hold a gambling license. **Ms. Froud** affirmed that Mr. and Mrs. Randazzo owned the entire corporation and they no longer wished to have a gambling license. **Commissioner Forrest** asked if staff had verified if the tavern had ceased their gambling business. **Director Bishop** clarified that they did not have to discontinue until they were served with an order to cease operation of gambling activities.

Commissioner McLaughlin made a motion seconded by **Commissioner Herbold** to revoke the gambling license for Doumani Enterprises, Inc. *Vote taken; motion carried with four aye votes.*

5. **CARD ROOM CONTRACTS UNDER APPENDIX C – HOUSE BANKED PILOT TEST:**

Slo Pitch Pub and Eatery, Bellingham

Cally Cass-Healy, Assistant Director of Field Operations, reviewed the Phase 1 contracts and reports. She reported the entity has operated a licensed card room for nine months and the restaurant-lounge has been open since July of 1997. Jasper Holding Incorporated owns the pub and eatery with Jaskarn Gill, and holds 100 percent of the ownership interest, they have no interest in any other card room in the test program. This organization has requested approval to conduct both house-banked and Appendix B card games with eight tables including two house-banked Blackjack tables, one Let It Ride table, one Pai Gow Poker table and four Poker tables. After reviewing the internal controls and conducting a pre-operations inspection, special agents determined that the licensees' operations would be in compliance with all the requirements of Appendices B and C. Internal controls appear to be functional as stated in the internal control submission, and staff recommends approval to participate in the house-banked card room test at a Level II Phase I operation.

Chairperson Ludwig asked if Pai Gow was eliminated during the pilot test. **Director Bishop** responded by advising that Baccarat and Red Dog had been eliminated. **Commissioner Herbold** inquired if there was a time period that an organization must be in operation before being allowed to move to Level II

Phase I. **Ms. Winslow** said there was none.

Jaskarn Gill, owner, introduced his Casino Manager, Beverly Milligan. **Chairperson Ludwig** asked if he was only asking for five table games. **Mr. Gill** advised they have four Poker tables and are asking for four house-banked games. Chairperson Ludwig asked if they were operating the four table games as non-poker under player-supported rules. Mr. Gill advised they had been operating three player-banked tables previously, stopped approximately three weeks ago, and were ready to start doing business upon approval.

Commissioner McLaughlin asked if Appendix C worked the same as Appendix X in the enhanced card room with regard to wagers. **Ms. Winslow** responded that Phase I Level II would be limited to \$25 wagers, and Phase II Level II allows \$100 wagers. Commissioner McLaughlin inquired if this is identified under Appendix C. Ms. Winslow advised both were in Appendix C. Commissioner McLaughlin inquired if they operated in the same way with the exception of operating five tables instead of 15. Ms. Winslow indicated Slo Pitch's operating agreement allows eight tables. She clarified that the narrative governs the report, not the licensed activity. Ms. Winslow noted that when the Commission transitioned from the old program to the current program, licenses were issued based on the operating agreement. The agreement doesn't list the actual number of tables on the license any longer, which is something that will be corrected for the next meeting.

Commissioner Herbold made a motion seconded by **Commissioner Forrest** to approve the Slo Pitch Pub and Eatery, located in Bellingham to conduct social card games and to enter into the Card Room Enhancement Program Operation Agreement. *Vote taken; motion carried with four aye votes.*

Sidney's Restaurant and Sports Bar, Aberdeen

Cally Cass-Healy reported this is a commercial restaurant, lounge and card room located in Aberdeen, Washington. The restaurant and lounge have been operating since September of 1994, and has not operated a card room for six months. They have requested a six-month waiver, which was granted based upon the experience of the casino manager. The business is owned by Rick and Linda Burgess, with each individual owning a 50 percent ownership interest. The owners do not hold an interest in any other card room in the enhancement test. Sidney's is requesting approval to conduct house-banked card games with ten tables including seven house-banked Blackjack tables, one Pai Gow Poker table, one Caribbean Stud table and one Let It Ride table. The internal controls were reviewed and a pre-operations inspection was conducted. It was determined that the licensee's operations were in compliance with all of the requirements of Appendix C. The internal controls appear to be functional as stated in their internal control submissions. Based on the review, approval to participate in the Commission's house-banked card room test as Level II Phase I operation is recommended.

Ms. Cass-Healy noted that on the inspection date, the licensee did not have an adequate number of key card employees; however, upon re-inspection they had adequate employees and all the paperwork was completed.

Commissioner Herbold pointed out that the report indicated they were granted a six-month waiver because they had an experienced casino manager. They are now going into Level II Phase I, which had no time requirement, and asked for clarification. **Ms. Cass-Healy** advised there is a requirement for someone to have six months of Washington card room experience. **Ms. Winslow** clarified that if and entity didn't have six months experience, they must receive a waiver. Therefore, in essence, they don't have to be open and operating for six months. Anyone getting involved with the house-banked program usually brings in staff that has the adequate experience to meet the six month waiver.

Commissioner Herbold noted that in the case of Slo Pitch, the time frame wasn't mentioned and apparently they didn't have a waiver because they were in operation for over six months with an experienced casino manager. **Ms. Cass-Healy** affirmed they were considered experienced after six months and not required to apply for a waiver. **Chair Ludwig** thought six months of card room operation was required prior to being eligible for the house-banked program, and if the entity didn't have the six

months, they could request a waiver. **Commissioner Herbold** questioned if there were other organizations on the list waiting to get into the house-banked test program who were closer to, or are exceeding the six-month requirement, and asked why the agency was giving waivers and listing approvals for operators who have a less than a month's experience. **Ms. Cass-Healy** affirmed that initially the agency had been sticking with the order on the list. However, right now, there are not very many people on the list who have a license and have chosen to go forward.

Director Bishop clarified that the requirement is not to have a card room license for six months. The requirement is that anyone going into this program must have at least six months experience. They could have owned another business or may purchase the experience by hiring a casino manager that meets the criteria. In reference to the Slo Pitch operation, the person had been operating a card room himself at that location for nine months, and therefore automatically had at least six months experience. Director Bishop noted the experience does not have to take place at the same location and the experience does not even have to be within the most recent six month period.

Commissioner Herbold reiterated that the people on the list are in the order that they submitted their applications; when their review time comes up, if they've been operating with a card room license for more than six months, they're okay. If they haven't been in operation for at least six months and they've bought an experienced casino manager, they may still go forward even if they've only been in operation for one month and even if there may be entities further down the list who have six or more months of experience. **Ms. Cass-Healy** affirmed, and noted that there weren't very many organizations that already had their license at the time they requested scheduling. Commissioner Herbold asked if staff anticipated seeing more occasions where organizations would get waivers based on having an experienced casino manager versus actual operating experience. Ms. Cass-Healy indicated it was possible. **Chair Ludwig** noted that there had been a high percentage of waivers over the past six months, and that it appeared that over half the applicants may have obtained waivers.

Rick Burgess, Owner, and **Edward Toser**, Casino Manager, were introduced. **Mr. Toser** advised that within the last few months they have taken people off the JTPA and Work First programs; they've hired approximately 87 people, and started training their personnel through Grays Harbor College, and are ready to open. **Chair Ludwig** asked if they were operating table games now under the player-supported program. Mr. Toser responded in the negative.

Commissioner McLaughlin inquired about the course at Grays Harbor Community College. Mr. Toser advised it is a casino-dealing training class and noted that students receive credits for the course. **Director Bishop** affirmed that several community colleges offer these types of courses. **Chair Ludwig** asked when the facility would open. **Mr. Toser** replied at 8:00 p.m., August 19th if approved, and distributed photographs.

Chair Ludwig asked how many card rooms there were in the Aberdeen/Hoquiam area. **Mr. Toser** advised that there was one other poker room about four blocks away. Chair Ludwig asked if there were any other house-banked card games in the area. Mr. Toser believed not. He indicated there was a tribal casino 30 miles in either direction – Shoalwater Bay and the Lucky Eagle Casino. Chair Ludwig noted the Quinnault's would be opening soon.

Commissioner Forrest made a motion seconded by **Commissioner McLaughlin** to approve Sidney's Restaurant located in Aberdeen for a social card room license, and to enter into the Card Room Enhancement Program Operation Agreement Level II Phase I. *Vote taken: motion carried with four aye votes.*

Sunset Junction, Spokane

Cally Cass-Healy noted this organization is a commercial restaurant, card room and lounge, and was granted a card room license on September 17, 1998. They have been in operation as a restaurant and

lounge for seven years and owned solely by Joseph Crosby. Mr. Crosby currently has no interest in any other card room in Washington. Mr. Crosby is requesting approval to conduct house-banked card games with six tables. Recently, they increased their request for house-banked Blackjack from two to three tables, one Pai Gow Poker table, one Spanish Blackjack, one Let It Ride table, and one Progressive Blackjack table. Special agents reviewed the controls and conducted the pre-operation inspection. It was determined the licensee's operations are in compliance with all of the requirements of Appendix C. The internal controls appear to be functional as stated in the internal control submission. It was noted during the pre-operations inspection that some of their equipment was not in place and therefore staff could not check the surveillance. A follow-up visit conducted on August 10th, showed all of the tables were in place and the surveillance was adequate. Based on the review, staff recommended approval as a Level II, Phase I operation.

Mr. Crosby clarified that they no longer have Pai Gow, but do have Spanish 21. **Chair Ludwig** asked if the entity had been operating a card room under player-supported rules. **Mr. Crosby** affirmed, until June 1, 1999. Mr. Crosby reported that they had more than the six months operational experience, and they were able to secure most of the good dealers in the Spokane area. Chair Ludwig asked if the market in Spokane could bear additional card rooms. Mr. Crosby replied that the market was still open.

Commissioner Herbold asked if there needed to be an additional inspection to verify the amount of tables. **Ms. Cass-Healy** replied that it was not necessary. **Representative Wood** noted that signatures have been gathered for the petition. **Mr. Crosby** affirmed and voiced his concern.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve Sunset Junction located in Spokane for a social card room license, and to enter into the Card Room Enhancement Program Operation Agreement. *Vote taken; motion carried with four aye votes.*

Quarterback Pub and Eatery, Bellingham

Ms. Cally Cass-Healy noted this organization was a commercial restaurant and lounge operated by Barry and Carol Cornell since September 9, 1993. It was granted a card room license on April 18, 1999. The owners requested and were granted a six-month waiver based upon the operational experience of the card room manager. The entity is owned by Cornell Management, and Barry and Carol Cornell each hold 50 percent of the ownership interest. Cornell Management and its shareholders do not have an interest in any other card room in the test program. They are requesting approval to conduct house-banked card games with ten tables, including nine house-banked Blackjack tables and one Pai Gow Poker table. Special agents reviewed the internal controls and conducted a pre-operation inspection. It was noted on the report that at the time of inspection, the licensee did not have an adequate number of key card room employees. However, a follow-up visit showed that an adequate number of employees have been hired and all required paperwork has been completed. Based on the review, approval to participate in the house-banked card room test program as a Level II, Phase I operation is recommended.

Barry and Carol Cornell introduced themselves. **Chair Ludwig** asked if Mr. Cornell was the former owner of the Slo Pitch Tavern. **Mr. Cornell** responded in the negative. Chair Ludwig asked what kind of employees he had that justified the six months waiver. Mr. Cornell explained that their casino manager had 30 years of experience. Mr. Cornell advised they were eager to open.

Commissioner Forrest made a motion seconded by **Commissioner Herbold** to approve the Quarterback Pub and Eatery located in Bellingham for a social card room license, and to enter into the Card Room Enhancement Program Operation Agreement. *Vote taken; motion carried with four aye votes.*

6. PHASE II REVIEWS: **Paradise Village Bowl, Tacoma**

Ms. Cally Cass-Healy advised this organization is a bowling, restaurant and casino establishment owned by Paradise Incorporated. Charles and Florence Lynn, husband and wife, own 100 percent of the outstanding stock in Paradise Incorporated. Mr. and Mrs. Lynn have no other holdings that involve gambling within the state of Washington. Paradise Village Bowl was originally licensed to conduct card room activities in April of 1996. On January 14, 1999, the licensee began house-banked gaming. They are currently operating 15 tables including 11 Blackjack, one Progressive Blackjack, one Caribbean Stud, one Let It Ride and one Pai Gow Poker table. Staff performed a comprehensive review and observation of the gaming operations to include: the closed circuit television, the cashier's cage, gaming and organizational records, count room controls, key control procedures, and inquiries of the law enforcement and taxing authorities. On June 30, 1999, an exit conference was conducted and the licensee agreed to make necessary changes. All violations were corrected. Based upon the review, staff recommends approval of a Level II, Phase II status for Paradise Village Bowl, effective immediately.

Chair Ludwig asked if they had been eligible for Phase II since July 14th. **Ms. Cass-Healy** affirmed. **Commissioner Herbold** asked if it was common for the original game table configurations to change after the licensing process and if this entailed special actions. Ms. Cass-Healy affirmed that they change often. If there is a change from the original request, staff must review the internal controls to ensure surveillance requirements and the agreed upon rules to the internal controls are adhered.

Charles Linn and **Tibby Bond**, General Managers, were available to respond to questions. **Mr. Linn** advised that all violations were corrected. **Chair Ludwig** asked if the recent County Council action affected his organization. **Mr. Bond** affirmed the Pierce County Commissioners voted 6-0 to ban all existing card rooms in unincorporated Pierce County. However, if the business was operating prior to August 15, 1999, they could remain open until August 2002. Mr. Bond affirmed this has placed a hardship on Paradise Bowl and they desperately need the \$100 limits to stay competitive and to do what they need to stay open beyond 2002.

Commissioner McLaughlin made a motions seconded by **Commissioner Forrest** to approve Paradise Village Bowl located in Tacoma for a Level II Phase II status effective immediately. *Vote taken; motion carried with four aye votes.*

Kegler's Choice, East Wenatchee

Cally Cass-Healy explained this organization is a card room, lounge, restaurant and a bowling center. They organized as a corporation under Orondo Bowling Incorporated. The primary stockholders are Timothy and Beverly Bauers, husband and wife, who began operating the bowling lanes and restaurant in July of 1990. They do not own or operate any other card rooms in Washington. On October 9, 1998, the licensee began house-banked gaming, and currently operates seven tables consisting of two Poker tables, one Let It Ride, and four Blackjack tables. Staff conducted a comprehensive review. An exit conference was conducted on February 28, 1999, and the licensee was cooperative and agreed to correct all Phase II violations identified by the review team. All violations were in fact corrected. Staff recommends approval of a Level II, Phase II status for Kegler's Choice, effective immediately.

Tim Bowers, stockholder, introduced **Max Falkner**. **Chair Ludwig** noted that this operation was in a good location. Mr. Bowers agreed that it was growing rapidly.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve Kegler's Choice located in Wenatchee for a Level II, Phase II status. *Vote taken; motion carried with four aye votes.*

7. TRIBAL LOTTERY SYSTEM REVIEW

Ballys/Oasis, Reno, Nevada

Dallas Burnett, Special Agent, reported that through the sponsorship of the Puyallup Tribe, Oasis Technology Inc. is seeking certification and approval for an electronic lottery scratch ticket system conforming with the specifications as outlined in Appendix X. The agency's lab and GLI have reviewed the system and found it to be in compliance. He advised that the system is different from the other two systems certified. Mr. Burnett demonstrated the game and pointed out that this system is a cashless base system. It utilizes a "Smart Card" system that allows a credit up to \$8,000. The player chooses the particular game they want to play and selects the denomination for that particular game. Mr. Burnett demonstrated an actual play and explained that to end the play, the player hits the cash out. If the player wanted to go back to the menu to choose another game, he could do that as well. Credits are either added or subtracted to the card and when the player is finished, he removes and takes the card with him.

Chair Ludwig asked about the other games. **Mr. Burnett** advised there were four different types of games -- all single line, three-reel games. The first system for approval was similar to the game demonstrated. He stated the other games were basically the same design with different symbols. They all have the same number of tickets but with different payouts. All have above 75-89 percent payouts.

Chair Ludwig asked if this was in compliance with the court's ruling and within the tribal negotiated limits. **Mr. Burnett** affirmed. He noted it was not identical to the two systems certified a few months ago. He advised the other systems had different types of cash systems. One system had a manufacturing central computer in the same box, and the other system had a manufacturing central computer separate. He noted that the demo machine uses five different computers -- one takes and stores all of the tickets, two other computers manage the communications between the whole unit.

Commissioner Forrest asked if we could expect to see any difference in the systems that might make one inherently better, more attractive, or more efficient than others. **Mr. Burnett** advised that the Sierra System utilizes symbols that are fairly well recognized by the players. MultiMedia uses a more advanced graphical interface that makes it look nicer. The Oasis system has also used this method for a number of years and they are constantly improving their graphics and manipulating files. All of the systems must be verified for compliance before they are allowed on the lottery-based systems.

Senator Winsley asked about the Smart Card monetary limit. **Mr. Burnett** advised there was no limit because the cards can store any monetary unit. Senator Winsley asked if she could put down \$8,000 and then play the nickel, quarter and dollar machines at any time in the complex. Mr. Burnett affirmed. Senator Winsley asked if there was a safety mechanism on the card to protect a person if they leave their card in the machine. Mr. Burnett responded that the card is like was money, there is no protection, however, the person's name is on the card. **Director Bishop** noted this particular technology could allow the person to personalize their card with a pin number for security purposes.

Chair Ludwig asked if this machine would have a market other than in Washington. **Mr. Burnett** believed other states were looking at the system.

Commissioner McLaughlin noted that a slot machine is a stand-alone terminal and asked if these machines were hooked together on a computer. **Mr. Burnett** affirmed and explained that this particular system generates a number of tickets. The tickets are similar to the scratch tickets one buys at (for instance) the 7-11 stores. There is a stack of tickets installed on the hard drive and they are sorted and distributed to the central computer. The central computer waits for someone to play a particular credit. When the player plays a credit, a ticket is disseminated from the central computer directly to the screen. Essentially, the player is taking from the top of tickets and scratching the surface to find out the results. Commissioner McLaughlin asked if there were three or four players on-line at the same time, are they given different tickets. Mr. Burnett affirmed. He said players were playing against the whole game set, which is different from slot machines. With slots machines there is no competition between the other players, it is only the machine and the player.

Commissioner Forrest asked if a player purchased a higher value ticket, would it give the player different odds than if he had purchased a lower value ticket. **Mr. Burnett** replied that it would not

because the whole game set has a certain percentage of winners and the winners are mixed throughout the set. Everyone has an opportunity, from the smallest amount to the highest amount depending on how many tickets they want to purchase. **Commissioner Herbold** asked how many tickets were in each game. Mr. Burnett advised there were a million tickets for each game.

Paul Loffgreen introduced himself as Vice President for Alliance Gaming. **Chair Ludwig** asked how long Bally's had been making gambling devices. Mr. Loffgreen responded 50 to 60 years, and noted the industry is moving toward cashless systems. Washington is the first state to go completely cashless. He affirmed the equipment is more expensive, but, the cost for labor to supervise the use of money is less expensive.

Representative Wood asked if this was a more secure system. **Mr. Loffgreen** advised that safeguards must be in place because cash is involved. Wherever cash is involved, there is a potential for criminal elements to get involved. Mr. Loffgreen affirmed it could be more secure.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve certification and approval of the Oasis Technologies GC300 Tribal Lottery Scratch Ticket System.

Commissioner Forrest seconded the motion saying it was too late to disapprove the machine in view of historical decisions. **Chair Ludwig** enlarged on Commissioner Forrest's comments reminding the Commission that they had approved two previous machines which were negotiated with the Tribes as a result of the so-called "Friendly Lawsuit." The testimony affirmed this meets all of the negotiation criteria. He indicated his belief that the Commission crossed this bridge when they entered into negotiations and when under the advice of the Attorney General, they approved the two previous machines. He called for any other questions.

Commissioner Herbold asked the record to reflect that she respectfully disagreed with that analysis and that she voted "no" on the machine issue. Commissioner Herbold also noted that she has voted "no" on the individual machines, and she will vote "no" again.

Vote taken: motion carried with three aye votes and one nay vote cast by Commission Herbold.

Mr. Loffgreen thanked the commissioners and staff for all the work they had done throughout the process and for all of Mr. Burnett's work in working with them to make sure this is what the state of Washington wanted.

8. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:

Commissioner Herbold asked staff if there would be an opportunity to discuss the issue addressed in several letters the Commissioner's received in their packets regarding the wish of card room operators to have more than one Phase II review. She inquired if staff will go forward with the decision they made several months ago to proceed as quickly as staff limitations will allow. **Ms. Winslow** affirmed the topic was not on the agenda, but the issue was discussed at length during the day's study session. A number of operators expressed concern about their ability to remain in business if they had to continue at the Phase I operations. Ms. Winslow also noted that because of Phase I inspection requirements, staff was not able to do the Phase II reviews in the six-month time frame that they had originally projected. She noted that at this time, there are approximately eight operators that have been in the house-banked program operating for over six months and that staff has been unable to conduct their Phase II review. These businesses have had to continue under Phase I and they're indicating this is creating a financial burden they had not planned on when they entered the test program. A suggestion was made that staff consider having the Gambling Commission contract with a public accounting firm (very similar to what they are talking about with the internal control evaluations). Staff has indicated they would be willing to study the possibility and wanted to discuss the concept with the Commission upon the conclusion of their review.

Director Bishop affirmed this discussion entailed three-quarters of the study session discussion. He also reported that staff conducted a meeting with a representative from RGA last week on this same issue. He acknowledged there were competitive factors that staff didn't think of regarding the six month criteria. Another issue of concern was location. If there are two operations close to each other and one has \$100 betting limitations and one has \$25 limitations, players will all drive by the \$25 location because their options are higher at the \$100 facility. Director Bishop emphasized this certainly is an example of a competitive factor that the commission did not intend to impose on anyone. Staff's reasoning for the Phase I or lower levels was to ensure operators would have experienced staff who knew and were following the rules and would be capable of operating at a higher betting level. He explained about never anticipating the agency would be regulating 50 card rooms while simultaneously trying to implement new operators into the program. Director Bishop acknowledged that some businesses have been on the Phase I list for well over a year. Some have invested considerable amounts of money, and they are asking the agency not to do the Phase II's because it would be detrimental to the businesses still in line for a Phase I Operation. They suggested staff consider some phase-in processes; that maybe after they operate for awhile, they be allowed to bump up to \$50, while they are doing the work to move to the higher limitations. Director Bishop affirmed staff would consider options, but, he emphasized that staff will also want to maintain their program. An option being considered consists of two components for the Phase II review. One is purely an accounting function to review the internal controls that are documented as operators are placed into the program. (Here are your controls, here is what you are supposed to be following -- then evaluate the controls to determine if they are adequate for the particular business and if they are being followed.) The second part is purely the regulatory functions that staff doesn't think need to be done by outside accountants, but are willing to consider if it can mitigate the problem.

Commissioner Forrest wanted to know how long it would take to "catch up" at the current rate.

Director Bishop advised that initially 13 staff were hired for the pilot program under the assumption the agency would be dealing with 30 operations. There are now close to 50 operators. The problem is that when new staff is added, it takes time to train the new employees, which causes a reduction of their productive hours for approximately the first six months. Director Bishop anticipated that six months from now, with adequate staff on board and trained, the agency could be caught up.

Commissioner Forrest indicated that he was under the impression that the internal controls had become boiler-plate in a way, and that they would be quite similar from place to place. **Director Bishop** affirmed the controls themselves are similar, how they are implemented in various locations would be different because of the physical layout, and because the management structure will differ. The approach has been that there are certain goals that need to be accomplished, and the operators should be able to modify to fit their specific business.

Commissioner Forrest believed the delays were a legitimate concern even though staff was doing all they reasonably could. He agreed there was a big difference between the \$25 and \$100 betting limits and how that may affect the profitability of their operations. Commissioner Forrest expressed his desire to develop a feasible way to ensure operators meet the Phase II criteria while at the same time being able to expedite the process. He believed the six months (or more) at \$25 limit before advancing to the \$100 limitation was a substantial business consideration.

Commissioner McLaughlin asked if perhaps Chair Ludwig meant an establishment eligible to go to the \$100 limit but didn't have the staff to verify the internal controls could possibly have three or four tables that were at \$100 while the remainder stayed at \$25. **Chair Ludwig** indicated that a licensee suggested that if a business has reached the six month period and a delay is through no fault of their own, then perhaps a wager increase to \$50 could be allowed until the Phase II review could be completed.

Commissioner Forrest asked if the internal controls and physical layouts changed substantially between the Phase I and Phase II review. **Director Bishop** replied that there are usually minor adjustments throughout the period, but they don't change day to day. Commissioner Forrest asked what the most time consuming portion of work was before an operation was deemed ready for Phase II. **Ms.**

Winslow said the majority of staff time is spent on monitoring existing card rooms. However, the Phase II operation requires more staff time to ensure everything is in compliance and that the internal controls are consistent with the model initially submitted. Quality level reviews bring the level of compliance up dramatically. Ms. Winslow also noted that a number of the operators coming forward for Phase II reviews were not having as many violations as they did in the first part of the program because of their experience. Ms. Winslow affirmed that staff are either monitoring or working on the Phase II's and again noted Phase II was a very comprehensive process.

Chair Ludwig asked what the very first Phase II review looked like compared to the approvals submitted today. He also asked if the licensee's waiting for a Phase II review were doing better. **Ms. Winslow** said she thought the majority were and noted that for the most part, staff was seeing improvements with each new licensee they do business with.

Commissioner Herbold asked what would happen to the process if the Commission said "No more six-month waivers; we're only going to consider people who have completed their six months. If you don't have six months, we'll move you back to a period of time when you will have your six months." This would allow those businesses with the six months experience to move forward more quickly.

Director Bishop advised that when the law was being proposed, staff thought they were going to be looking at card rooms as they existed and the only change would be adding a new activity – the addition of a couple tables of blackjack. There was a new activity; a card room license allowing the operator to run poker without surveillance or internal control requirements, or anything else. In reality, the only real experience they had was going through a licensing system. Director Bishop believed that if a business obtained a manager with many years of experience, it better prepared the business for the new activity versus someone who operated a poker room for six months. There was also a concern regarding people from out of state coming in and starting the game. The Commission provided some protection by establishing the rule requiring six months experience operating a card room. Even before the rule was passed it was acknowledged that if someone had six months experience (even in a tribal casino), that met the qualification.

Chair Ludwig affirmed the process let the applicants and the licensees know that there is a way they can take care of the six months' experience -- by getting adequate help and moving ahead with their business investment. Chair Ludwig believed that if we now say "sorry, you're never going to get a waiver until you run a player-supported card room for six months," it would be unfair, considering the investment the business has made, and based on the high volume of waivers the Commission has already given. Chair Ludwig indicated that he would rather have had the whole process go slower.

Commissioner Herbold concurred and noted the people who are waiting for their Phase II approvals are also arguing that they were led to believe that in six months they would have been approved, which in some cases hasn't happened. **Director Bishop** cautioned that he believed almost anything we do has the potential to hurt someone. His goal was to attempt to keep the financial impact as low as possible while still meeting the compliance goals.

Chair Ludwig concluded the discussion by suggesting further thought on the process. He called for any other public comments, there being none, he closed the public hearing.

7. EXECUTIVE SESSION

With no further business, **Chair Ludwig** recessed the open public meeting at 3:35 p.m. and called for an Executive Session to discuss pending investigations and litigation. Chair Ludwig reconvened the open public meeting at 4:55 p.m., and a motion prevailed to adjourn the meeting until 10:00 a.m. on August 13, 1999.

WASHINGTON STATE GAMBLING COMMISSION

COMMISSION MEETING
FRIDAY, AUGUST 13, 1999
MINUTES

Chairperson Ludwig called the meeting to order at 10:00 a.m. at the Westcoast Silverdale Hotel located in Silverdale, Washington.

MEMBERS PRESENT: CURTIS LUDWIG, Chair
MARSHALL FORREST, Vice Chair;
PATRICIA HERBOLD;
ELIZABETH McLAUGHLIN; and
Ex Officio Members SENATOR MARGARITA PRENTICE, and
REPRESENTATIVE KAREN SCHMIDT

OTHERS PRESENT: BEN BISHOP, Executive Director;
SHERRI WINSLOW, Deputy Director, Operations;
CALLY CASS-HEALY, Assistant Director, Field Operations;
ROBERT BERG, Assistant Director, Special Operations;
AMY PATJENS, Manager, Communications and Legal Dept.;
JONATHAN McCOY, Assistant Attorney General; and
SHIRLEY CORBETT, Executive Assistants

1. **APPROVAL OF THE MINUTES – July 8 & 9, 1999, MEETINGS:**
Commissioner McLaughlin made a motion seconded by Commissioner Herbold to approve the Minutes of the July 8 and 9, 1999 meeting as presented. *Vote taken: motion carried with four aye votes.*
2. **STAFF REPORTS: Agency Requested Legislation:**
Cheating Statue:
Robert Berg, Assistant Director, Special Operations, addressed the two pieces of legislation previously discussed at the July Commission meeting. Since that meeting, the draft legislation has been fine-tuned.

Mr. Berg reviewed the intent behind the amendments to RCW 9.46.196, the Cheating Statute. The update takes into consideration that gambling activities have changed in the state since 1973 and even more recently with the 1997 house-banking changes in legislation. Mr. Berg reported that the agency has been faced with monitoring and regulating gambling which has gone from a player-banked system to a house-banked system. This transition has increased the incentives to cheat because the money is greater.

RCW 9.46.196 calls cheating an activity that is punishable, at most, as a gross misdemeanor. Although there have been several improvements to surveillance security and other things regarding the operation of mini casinos since legislation authorized house banking, there has been a great deal of additional activity in terms of licensees and in terms of activity at those locations.

Current definitions would remain, but would be set aside as a separate portion of the statute. Cheating would then be allocated in degrees similar to professional gambling. Instead of being tied to a dollar loss, it would be tied to the number of individuals involved in the cheating scheme. Currently, in order to prosecute at the felony-theft level, the agency must be able to document the theft of at least \$250 for a Class C felony. However, people who cheat may or may not be successful in securing a great deal of funds. In addition, cheating can occur over a long period of time and it is very difficult to show the actual theft of a certain amount of money.

Mr. Berg explained that staff looked at alternatives in terms of providing suggested changes to the Commission including amending the theft statute. Currently, the theft statute defines the theft of certain things such as: public instruments, credit cards, and/or a vehicle of less than a \$1,000 value, as felonies. This is a broad approach, however, there are still individual incidents of cheating such as pulling back funds after they've been placed out for a bet, or trying to add funds to a bet that's been placed. As such, although considered as an option, the approach of amending the statute to define cheating as a felony is not recommended.

The proposed legislation deals with degrees of cheating not defined by the amounts of money that are stolen, but by the individuals involved in the cheating. If an individual is cheating, the penalty would remain a gross misdemeanor. If two people were cheating, it would be a Class C felony; and if more than two people were cheating, it would be a Class B felony. This proposal has been reviewed by other stakeholders, including the Washington Association of Sheriff's and Police Chiefs, the Washington Association of Prosecuting Attorneys, and the Recreational Gaming Association, who have unanimously endorsed this legislation. Mr. Berg reiterated the purpose of the proposal is to amend the cheating statute to allow for first, second and third degrees of cheating. First degree is a Class B felony, second degree is a Class C felony, and third degree will remain at the gross misdemeanor level.

Criminal Records and Privacy Act:

Mr. Berg presented the second proposed piece of legislation that would amend the Criminal Records and Privacy Act, RCW 10.97.050. This would authorize the Gambling Commission to receive certain non-conviction criminal history data while performing suitability for licensing investigations. This legislation also came before the Commission last year. Mr. Berg reiterated that the agency wears two hats -- as a law enforcement agency and as a regulatory licensing agency. When the agency asks for criminal history information with their law enforcement hat on, they receive all conviction or non-conviction data, just like any other law enforcement agency does. However, when the agency asks for information with their regulatory licensing hat on -- to determine the suitability for individuals wishing to be involved in gambling in the state of Washington, the agency does not necessarily or statutorily qualify to receive non-conviction data. This request will actually clarify this issue and authorize the Gambling Commission by statute to receive this information when performing suitability for licensing investigations.

The agency has an informal opinion from the Assistant Attorney General assigned to the Gambling Commission affirming the current language in RCW 9.46 mandates the Commission to keep the criminal element out of gambling in this state, and therefore gives the agency express authority to receive such data upon inquiry. The Assistant Attorney General assigned to the Washington State Patrol has a different view. The regulations in the Gambling Statute are very clear and staff views obtaining pertinent data as critical to their mission of keeping the criminal element out of gambling in our state.

Mr. Berg stated that there are many reasons why this legislation is being submitted again. He identified and responded to the four concerns raised the first time it was submitted:

- 1) The access to non-conviction data for licensure purposes should be resolved.
Response: The agency should get the data, this amendment allows that to occur.
- 2) There shouldn't be secondary dissemination of the non-conviction data from the Gambling Commission to anyone else.

Response: The Washington Association of Sheriffs and Police Chiefs, added the no secondary dissemination text last session, and it will remain in the bill submitted this year.

- 3) Concerns about agency protocols in tracking and recording criminal history information.
Response: The Commission's policy was been updated this year and agency employees have received documented training on secondary dissemination of criminal history data.
- 4) Impact of legislation on local law enforcement agencies as they do their job in performing suitability for licensing for investigations.
Response: As a matter of policy, all gambling tax revenues generated go to the local government for the purpose of enforcing this Act. Therefore, it is not an undue burden on local government when further investigations are conducted on individuals whom they've received hits through a computer inquiry.

Mr. Berg emphasized this is basically the same legislation proposed last year. It passed the Senate, did not receive a committee vote in the House, and therefore languished. Mr. Berg asked the Commission to authorize staff to work with the staff from the Office of Executive Policy (Governor's Office) to prepare the legislation for submittal again this year.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to support both proposed bills as presented. *Vote taken; motion carried with four aye votes.*

Division of Child Support Request for Legislation:

Ms. Amy Patjens, Manager, Communications and Legal Department, noted the agency was asked to look at legislation DSHS is considering proposing as agency-sponsored legislation. She recalled that two sessions ago there was a bill passed by the Legislature that gave the Department of Licensing the authority to immediately suspend someone's driver's license when they had a child support order entered against them and failed to make payments. This was implemented at the Department of Licensing and approximately 12 other different boards or agencies that issue professional licenses. At the time, gambling licenses were overlooked and this legislation would fix that oversight.

This legislation would apply to the individual licenses that our agency issues such as: card room employees, (typically people who are dealers), and to employees who work at tribal casinos as dealers. The agency also licenses other individuals – people who work at bingo facilities. It would not apply to businesses. DSHS send notices to the tribes on this proposed legislation.

Once a quarter, the agency would send a list of all of the card room employees or individual licensees that the agency has to DSHS. They would match the list in their database with people who were not complying with support enforcement orders. DSHS would then ask the agency to immediately suspend the gambling license of any identified individuals. The purpose of the law is to get the person's attention and to get to them to talk to the support enforcement personnel and work out a payment plan. Staff has reviewed the proposed legislation and offered changes that would build in some time for processing changes.

Senator Winsley questioned how high gambling winnings must be before federal income tax is automatically deducted from the winnings. **Director Bishop** thought approximately \$1,200. He believed there wasn't a required withholding for card and machine games, however, a W2(g) form is issued. Senator Winsley questioned why the establishment couldn't automatically deduct the outstanding child support order. **Ms. Patjens** affirmed there is similar legislation for Lottery winnings. Senator Winsley indicated that if this legislation came before the Legislature, she would place an amendment of that nature to the bill. Ms. Patjens advised that she would pass those comments to DSHS.

Commissioner Forrest asked if DSHS already had the power to enter a charging order like a garnishing. **Chair Ludwig** affirmed. **Commissioner Forrest** indicated that he didn't like the idea of the

agency summarily suspending a license, and all the mechanics of reinstating it when DSHS has other adequate remedies. He emphasized that he is for collecting child support, but, he believed the Commission should proceed in their normal way and let DSHS use their normal collection efforts.

Ed Fleisher, Deputy Director, Policy & Government Affairs, pointed out that prior to any actions being taken (driver's licenses or otherwise), there is a hearing process within DSHS. If someone is behind in their child support they have already been notified by DSHS, and if they don't pay by a certain time they are required to appear before DSHS. In essence, there would be a due process hearing prior to them notifying the agency. **Commissioner Forrest** indicated that took care of most of his concerns.

Commissioner McLaughlin asked how people were supposed pay child support if they lost their job. **Ms. Patjens** emphasized the point of the legislation was to get the parent's attention and get them to enter into a payment plan. She noted that only four professional licenses have actually been suspended and that DSHS views this program as being very successful. **Commissioner Herbold** concurred that a person can't pay child support if they don't have work. She asked if the delinquent parent received adequate notice from DSHS so they could take action with DSHS and straighten things out. **Ms. Patjens** affirmed. **Commissioner Herbold** noted they must not actually revoke the license, which saves them the second step. **Ms. Patjens** affirmed and noted the parent gets several opportunities to respond.

Recent Moratoriums & Restrictions on Card Rooms by Local Jurisdictions:

Ms. Patjens noted that in February, she updated the commissioners on several jurisdictions that had passed moratoriums providing time for them to decide whether they wanted to prohibit card rooms and other activities such as pull tabs. In February, there were six cities with moratoriums, several of which had been converted to complete card room bans. There were also several cities that were just talking about banning card rooms, one of which was King County. A ban has not taken place yet, but an ordinance has been drafted. Since then, there have been ten other jurisdictions that have banned card rooms and a few who have banned pull tabs. **Ms. Patjens** directed the commissioners to the list in their agenda packets. She highlighted some of the actions that cities have taken specifically relating to the card room licensees. The City of Redmond banned card rooms which forced the Redmond Hotel Cafe to close its doors a few weeks later. Pierce County recently banned card rooms and gave Paradise Village Bowl three years to close the card room portion of their business. They are a house-banked card room and were approved for a Phase II yesterday by the Commission. This also affects Six-Card Charlies, another business that was approved last month to enter the house banking program. The City of Kent passed a ban on card rooms and gave Ruby's Casino, a house banked card room, five years to cease its operations. **Ms. Patjens** said there are still some moratoriums in effect – Lakewood has one but they grandfathered Jimmy G's in, which has been approved. Auburn also passed a ban but they've allowed two card rooms to stay in existence forever. They did not have an amortized period like some of the other ordinances. **Ms. Patjens** noted the City of LaCenter passed a moratorium on applications if there is a need to expand a parking lot beyond three parking spots. Renton has a zoning ordinance that if the business is south of 405 they can have a card room, north of 405, they can't (or vice versa). The City of Burien has zoned out all card rooms, but they've allowed Wizard's, which is a house-banked card room to continue to operate.

Commissioner McLaughlin inquired why card rooms and pull tabs were looked upon as a vice, while bingo is apparently not considered to be gambling. **Bob Brennan** responded that it was because bingo is considered a charity. **Commissioner Forrest** clarified that the Legislature thought there was a sufficient difference when they authorized bingo for charities. This was before mini casinos or card rooms. He didn't think it was strange that current legislators now see a distinction between an activity that's carried for charitable purposes and one that's not for charitable purposes.

Commissioner Herbold asked what individuals who feel they have been detrimentally affected by a ban could do. **Ms. Patjens** said that when an application comes in from a jurisdiction where there has not been an outright ban, commission staff sends a letter to the applicant informing them that they have applied for an area that has a ban in effect. The agency still processes their application to determine if

they are qualified, but they are required to obtain a non conforming use permit from the city. This gives them the opportunity to make a legal challenge or to withdraw their application.

Commissioner Herbold thought it would make more sense for staff to obtain the non conforming use permit from the city before proceeding with the processing of the application in order to save time processing something that might not come about. Ms. Patjens advised that there has only been one situation where the licensee was into the licensing process before the city passed their ordinance. The licensee was given the option to refund the money or continue the process. Commissioner Herbold concurred someone already in the process when a ban was imposed would have a better argument.

3. **RULES FOR DISCUSSION and POSSIBLE FILING:**

Established Business Defined:

Ms. Patjens noted this issue was first addressed at the April Commission meeting and has been discussed every month since. Questions were generated about businesses opening their card room and their restaurant on the same day. Under the current rule, a business would be considered to be an established food and drink business if it's been open to the public for 90 days. There was an exception; they would be presumed to be established if they had received all of their permits and if they provided an estimate of what their food and drink sales would be in comparison to their other business activities. The third amended version of the rule, 3(a), stipulates that the food and drink business must be in operation for 30-days prior to the license actually being granted. Under the alternative version, they would have to operate for 30 days prior to applying for a license. If it is 30 days prior to applying for a license, and takes between 45 and 60 days to process a license, this means the business would have to be operating approximately 90 days before they would be able to start doing the card room activity or any other gambling activity.

Ms. Patjens reported that Item 3(b) clarifies that the food and drink part of the business must be open to the public at all times that gambling is in operation. There is also a provision under 4(a) Subsection 4, that if a food and drink business was purchased from someone else (it already existed), then it would be considered to be established if the prior business had actually been licensed for gambling 30 days prior to the purchase. Ms. Patjens noted that Item 3(a) and 3(b) are scheduled for final action today. At this juncture, staff recommended at the very least, the passage of Item 3(b) requiring that the food and drink part of the business be open to the public whenever gambling is occurring.

Chair Ludwig proposed that the commissioners discuss 3(b) first and opened the issue for public comment.

Ms. Delores Chechi, speaking on behalf of the RGA, stated that they would be open to endorsing the rule change. No other public comments were offered. **Chair Ludwig** closed the public hearing and called for a motion.

Commissioner Herbold made a motion seconded by **Commissioner Forrest** to approve the amendments to WAC 230-04-080 effective 30-days after filing. *Vote taken: motion carried with four aye votes.*

Chair Ludwig called for comments regarding 3(a). **Commissioner Herbold** expressed concern that the Commission was getting away from the initial concept that a card room license could only be granted to an established business that was primarily engaged in the food and drink service to consumers on the premises. Ms. Herbold noted that amendment 3 has no reference to commercial stimulants and questioned how compliance could be measured if there weren't any standards the Commission could refer to in order to make sure they were following the legislative mandate. She believed that if an operation is primarily a food and drink business, the gambling activity is a commercial stimulant to that business.

Mr. Fleisher explained the rule is defining an established business. Other WAC's deal with the issue of "primarily engaged." He stated that rule 3(b) which was just amended, is the current rule on how it is determined whether a business is operating as a commercial stimulant to a food and drink business.

Commissioner Herbold addressed the issue of calculating the total gross sales of food and drink and believed the formulas were no longer used. **Director Bishop** responded that the formulas are used for businesses that do not have a liquor license of any type. He said the Liquor Control Board has requirements stipulating that specific types of food must be available such as hot entrees. Mr. Fleisher noted that the way the commercial stimulant WAC (230-040-080) is written, there are two possible tests:

- (a) if it has a liquor license, either a tavern or spirit license or hard liquor license; and,
- (b) if it is a business that doesn't have a liquor license, then it has to go through the requirements.

Mr. Fleisher said that RCW 9.46.0325 defines it as an established business primarily engaged in the selling of food or drink for consumption on the premises.

Commissioner Forrest clarified that if a business has a liquor license, there are no additional concerns as far as complying because the Commission relies on the Liquor Control Board for whatever requirements they make for food. If there were no requirements for food, the Commission could still grant a license, and if a business didn't have a Class H license, then the Commission could apply some kind of a functional test. **Mr. Fleisher** responded that if there was no Class H or a tavern license, the agency could apply a test pertaining to the gross sales issue as in b(2). In which case, the total gross sales of food and/or drink for on-premises consumption has to be equal to or greater than all other combined non gambling gross sales, rentals, or other income that occur on the premises. The Commission looks at the premises to determine that the primary non gambling business measured by gross sales is the food or drink business.

Director Bishop noted the '94 change to commercial stimulant left certain language in. He believed the intent was to get the Gambling Commission out of the measurement business. Prior to that, the agency actually required every commercial stimulant licensee to report their food and drink sales, all other sales, and all gambling sales. There were two measurements. First, the food and drink sales for on-premise consumption had to be at least 50 percent of their total non-gambling sales. If the business was a bowling alley and the bowling revenue was \$100,000 and the food and drink was \$50,000, they were not considered to be primarily a food and drink establishment; they were primarily a bowling business. Secondly, for example, if the numbers were reversed and it was \$100,000 on the food and drink side and \$50,000 in bowling, there would be a total sales for the food and drink business of \$150,000. This would be measured against gambling revenues to determine if the business was using gambling as a commercial stimulant.

Director Bishop noted that since the mid-80s, there were various deductions allowed from gambling. Deductions were first allowed for taxes paid, then the cost of the series for punch boards and pull tabs, or the cost of their cards for card games. Finally, capital expenditures were allowed if an operation was improving their business; the Commission allowed them to use that as a deduction. **Director Bishop** affirmed this practice was very complicated and he reiterated the purpose of the change in the '94 law, as he understood it, was to get the agency out of this measurement business. **Commissioner Herbold** replied that she wanted to make sure that the Commission was not going down a path that flies in the face of what the Legislature wanted the Commission to do.

Senator Prentice confirmed **Director Bishop's** memory of the sequence of events. She recalled extensive legislative discussions at that time, particularly as they looked at the change in activities.

Commissioner Forrest asked if it wouldn't be simpler for the legislature to pass a bill saying the business can have a gambling license; and that "we" don't care about food and drink sales. **Commissioner Forrest** was not in favor of having lots of complex and complicated rules. He hoped **Senator Prentice's** committee would recognize that realistically, people do not open a restaurant and then have gambling to stimulate their restaurant business. They open a restaurant in order to qualify and get the gambling license.

Director Bishop recalled an issue that was a major concern during this period. The Legislature confirmed that, although a business may sell some food and drink, they did not intend businesses such as the 7-11's to be in the gambling business. The rules under discussion were designed to take care of this issue and to establish criterion that would allow for a bona-fide restaurant to qualify. These businesses are required to demonstrate their qualifications annually by providing data that will prove they are truly a food service business. They are not measured quarterly.

Senator Prentice asked the commission to proceed cautiously before simply throwing the rule out. She expressed concerns relating to gas stations with major mini marts that carry all kinds of food. If it were suddenly "okay," she believed the rebellion would be huge. **Director Bishop** noted the bill removed the words incidental and primarily. During discussions, it was decided that the word primarily needed to remain in the text in order to take care of the 7-11 types of scenarios.

Commissioner McLaughlin inquired what problem we are we trying to solve. **Commissioner Ludwig** said he perceived a problem if a person went out and found a good location for a card room, bought it, and wanted to go right into business as a card room. He didn't view this as meeting the old or current definition of "established business" or the alternative provisions for complying with that definition. In hindsight, he noted that staff have worked with the existing rule for house banking for over two years and asked if they perceived a need to change the current rule. **Director Bishop** perceived the definition of an "established business" to be purely a policy issue. He noted that staff was quite comfortable with the rule which allowed an alternative for a new business to start with a gambling license. He indicated that specific provision initiated these discussions. Concern was expressed that businesses were being opened as mini casinos rather than an established business (such as a restaurant) with gambling activities available. **Director Bishop** affirmed that the criteria set forth allowed staff to be comfortable that at least the business was putting forward all the necessary steps to be a restaurant or a food and drink business.

Chair Ludwig was apologetic, questioning if he had done the right thing in bringing the issue forward for discussion. **Senator Prentice** and **Director Bishop** assured him that the discussion was valuable. **Commissioner Ludwig** opened the issue for public discussion.

Mr. Bob Tull, representing Recreational Gaming Association, referred to the extensive discussion at the Leavenworth meeting. He reiterated that it has always been the RGA's position that there isn't a present need for the proposed change. Mr. Tull believed that imposing a preliminary operating period requirement would hurt the little guys much more than the big guys. Any time the barricade is raised to get into a new business activity, it becomes harder and harder for the people with less capital or fewer resources. Mr. Tull asked that this particular issue simply be withdrawn at this time or tabled indefinitely. If problems arise that require specific rulemaking surgery, it can always be placed back on the agenda. With no further comments, **Commissioner Ludwig** closed the public hearing.

Commissioner McLaughlin made a motion to table this issue indefinitely. The motion died due to a lack of a second. **Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to withdraw the proposed rule. Vote taken; motion carried with three aye votes. **Commissioner Forrest** voted nay.

4. **PUBLIC DISCLOSURE REQUESTS:**

Ms. Patjens referred to earlier testimony by Mr. Berg regarding the secondary dissemination of criminal history information wherein it was discovered there were two WAC's that were inconsistent with state law. WAC 230-04-020 relating to Certification procedure – General Requirements – Mandatory Training required, and WAC 230-60-025 relating to Public Records Available – Location – Time Available. These two rules will clarify that conviction records are public and can be disseminated, but that non conviction records would not be released. Staff recommended adoption effective 30-days after filing, which brings the rules in compliance with state law.

Chair Ludwig opened the issue for public discussion, there was none, and he called for a motion.

Commissioner Herbold made a motion seconded by Commissioner Forrest to adopt both WACs by reference. *Vote taken; motion carried with four aye votes.*

5. Promotional Contests of Chance

Ms. Patjens reviewed the history of promotional contests of chance and no-fee bingo. She explained this set of rules fixes some of the problems with promotional contests of chance. Ms. Patjens referred to handouts in the Commissioner's packets that consisted of court cases as well as letters from the non profit organizations. The current law was passed in 1975 or 1976, and came about largely because of the court cases relating to businesses that were conducting promos, trying to get people into their establishments. The court held that having someone come into a business was consideration if the business received a benefit from it, and that it was all gambling even if they never required a payment or anything else to enter into the contest.

Ms. Patjens said there are two agencies involved with the promotional contests of chance. The part on what can be done to enter a contest is under the Gambling Commission statute. The law states that contestants have to be able to participate equally with other people, and lists nine different requirements. The requirement that has had the most questions is subsection h which says they could be required to furnish a container of a product, but only if they could furnish a blank piece of paper with the manufacturer's name in lieu of the container. The agency has jurisdiction over such an entry. The Attorney General's Office (Consumer Production Division), would have jurisdiction if there are complaints about how the drawing was executed. Originally, staff reviewed all promos and approved them. There were approximately 90 a month, which was very time consuming. This is an unlicensed activity and there were no fees to cover the costs. There was a bill in 1988 that would have required a business to pay a registration fee; however, that bill failed. The agency then decided to decrease the time spent on promos. When we receive questions, the individual is referred to a brochure and the promotional contest of chance laws. This has decreased staff's time, but it still requires staff's time to answer questions because regardless of what form the rules are filed in, that portion of the statute is under the Gambling Act.

Ms. Patjens advised that in 1993, staff looked at the statute and took a broader interpretation; they decided if there was a free method of entry, it would be okay to require someone to make some type of a purchase. This was an extension of subsection h. Moving forward six or seven years, people have become more creative with their promotions.

Ms. Patjens affirmed the more recent issue is no-fee bingo. In the beginning of 1997, licensees and other businesses wanted to offer a variation of bingo where there was no fee to play, to get people into their business. Originally, the agency sent approval letters with some conditions attached. Licensees were advised the statutory authority for the approval letter was unclear and could be re-evaluated in the future. A few months ago, staff began receiving requests from businesses that wanted to engage in this activity. The activity was no longer limited to one to two days a week, and businesses wanted longer time frames. Although the letter had no restrictions regarding the amount of time, it was the agency's understanding this was going to be a limited activity. After reviewing the statute again, staff felt they could rescind the past approvals, and that businesses could start looking at some type of legislative change to add a method of entry to the promotional statute. They could describe a method of entry as doing some type of no-fee bingo. The agency received many letters and telephone calls from upset people. It was noted the term "Bacon Bingo" came from the fact that one business gave away one pound of bacon once a week.

Ms. Patjens noted that staff considered the rules again and came up with a package they believe might solve a number of the problems with promos. Item 5a is a definition section and explains that a promotional contest of chance can't be the product promoting a gambling activity. Item 5b is a whole new section dealing with interpretations and restrictions on promos. Subsection 4 of that rule addresses

the fact that people are automatically entered into a promo when they purchase goods or services. The rules state this would not be considered being required to make a purchase as long as under the rules of the contest, someone can register without making a purchase. This addresses some of the promos that different businesses such as credit card companies, gas stations, and others conduct. Subsection 5 of that rule deals with an interpretation of what "expending time, thought, and attention and energy perusing promotional materials" means. It has been proposed that the amount of time be decreased to be consistent with whatever rules are developed relating to no-fee bingo. Item 5c talks about no-fee bingo and how it would have to be played very similar to the conditions previously sent out in approval letters, with the exception that the agency will no longer be in the approval-letter business. Item 5d talks about the standards for disposable bingo cards. This is a small change that would allow manufacturers to provide bingo cards to businesses who want to do these types of promos.

Ms. Patjens advised that since the last meeting, there has been some discussion about the current and proposed time limit for the bingo games. It was suggested that it would be better if there was a game limit instead of a time limit. Ms. Patjens noted the rules are up for filing and further discussion, and that staff recommends filing.

Ed Fleisher noted the rule addresses an issue on using gaming devices as part of the entry to the contest. This clarifies that gaming devices are not an allowable method of entry under the statute.

Commissioner Forrest asked staff to clarify that the reason for the Commission's involvement was because it was presumed that the rules fell under the Gambling Statute. **Commissioner Ludwig** affirmed that last month's review didn't explain this was on the agenda for possible filing and was delayed because there was a consensus that if this activity was not considered gambling, then the agency did not want to regulate it.

Mr. Jonathan McCoy, Assistant Attorney General, stated that the reason he believed it is part of the Gambling Commission's responsibilities is because this is like amusement games. The idea is, if it is conducted properly, it is not a gambling activity. If it is conducted improperly, it becomes a gambling activity. The gist of the law at the time the promotional contest provision was passed, was that there was a prohibition on these kinds of activities as a result of some Supreme Court decisions. They had deemed these types of contests did constitute a lottery because getting people to come to the premises was a benefit that the operation got from conducting the contest. That was consideration sufficient to support a lottery. The provisions were passed in order to create an exception to the lottery statute. The original language deemed that if you did nothing other than these forms of entry, that was deemed not to be a lottery. Mr. McCoy indicated that the reason it was included in the Gambling Act initially was because if the activity didn't fit within the four corners of this process, then it was a gambling activity, and would be prohibited.

Commissioner Forrest asked if this should be a gambling activity the Commission should license, or be required or authorized to license. Mr. McCoy responded that there was no license process included in the statute as there are for the different kinds of activities the agency does license. Commissioner Forrest asked if it would be a misdemeanor if someone violated 9.46.0355. Mr. McCoy said that usually the offender is advised not to do it again. If that doesn't work, there is a provision in the Act that would allow the ability to enjoin the activity as being a violation of the statute.

Commissioner Herbold asked if any current action would have the effect of limiting the number of times the activity such as a no-fee bingo arrangement may occur. She noted the non profits are limited in the number of days they are allowed to operate bingo events, and asked if there are there similar limitations as well as the 30-minute time frame limitation. **Ms. Patjens** said there were not, but they could be added. Commissioner Herbold believed it would be appropriate to limit the number of days, out of fairness to the non profits, since it would be commercial establishments who would be utilizing no-fee bingo.

Commissioner Forrest made a motion seconded by **Commissioner McLaughlin** to file the proposed

rule. **Chair Ludwig** noted that before the vote, he would open discussion for public comment.

Jon Chittenden, President of the Kitsap County Licensed Beverage Association, and member of the State Board of Directors for the Washington State Licensed Beverage Association, stated that he owns Brewsky's Tavern in Bremerton. He advised that he received approval from the Gambling Commission in August of 1997 to conduct bar stool bingo. His establishment is in "blue-collar" Bremerton. He said that his customers expect something in his establishment other than just drinking. They expect amusement games, pinball, pool – something they can bring a partner with them for a couple of hours of fun. The justification for two-hour bingo is that it can't be done in a half hour, there isn't enough time. Mr. Chittenden advised that he conducts his games once a week, and that his customers look forward to it. He urged no-fee bingo be allowed one day a week for two hours.

John Beadle, representing the WCCGA, said that they have never been opposed to bar stool or bacon bingo, and are not opposed today. What threatens them is when it is magnified into giving away trips to Las Vegas and running full-fledged bingo. Mr. Beadle said his organization believes this is encroaching upon the non profit's ability to operate bingo. The WCCGA encouraged the WAC's be filed. He advised they have one recommended change to WAC 230-46-045; suggesting \$10 per prize, even if there are multiple winners, versus the \$25 prizes allowed for bacon or bar stool bingo. In response to the previous testimony about time, the WCCGA would be willing to give up to an hour, as long as it is no longer than once per day. **Chair Ludwig** pointed out that the previous testimony referred to two hours once a week. Mr. Beadle thought that if more than an hour a day is allowed, there is a statutory conflict. He explained that court cases have been filed and when they define lottery to include a substantial amount of time to perform the lottery, it becomes consideration and is an illegal gambling activity.

Steve DeCou, owner of the Loop Tavern in Beaver (eight miles north of Forks), advised that he runs his games for four hours every Tuesday. It has become a community social event attended by young and old alike. He questioned if the rule is within the gambling rules. He advised that he has no problem with the \$5,000 per year amusement restriction, but he did not believe people could conduct bingo in a half-hour. Because of the new liquor laws, new amusements need to be developed so people can enjoy themselves and not leave the establishment drunk. Mr. DeCou believed the new half-hour rule for bingo will ruin the great times that they've been enjoying in his town for years. He urged the Commissioners to lengthen the amount of time for "Beaver" Bingo.

Vito Chiechi, representing the Washington State Licensed Beverage Association, suggested maintaining the \$25 limit "because the price of bacon has gone up." He believed \$25 is a reasonable limit and noted his organization did not have an objection to one hour, one business day a week, or more than one hour twice a week. He hoped the Commission would consider the little guys in the outlying areas of Washington and their unusual circumstances.

Julie Porter, representing the Washington Gaming Consultants, addressed tying promotions to gambling. She believed promotions are a fact of life in gambling, and noted the casinos are promoting their slot machines. She believed it would be safe to say hundreds of thousands of dollars in jackpots and card room runs can be considered promotion because it brings in business. They also have lotto runs where they get a chance to win \$25,000 and cars. She asked where the line will be drawn. If the rule is going to be applied, it needs to be applied fairly. She asked the Commissioners to think of the small person and not take this activity away. She said promotions and gambling are legal. Ms. Porter proposed this issue be presented to the Legislature. The RCW's are 25 years old and the statutes should be re-addressed so they can fairly look at promotions and how they impact every area and assure that it is being done fairly.

Commissioner Ludwig asked if she thought the people in this state wanted a policy promoting gambling. **Ms. Porter** questioned if they were promoting, or trying to get people into their businesses. She believed the idea of something for nothing is what people like. The reality is that we have gambling in the state and it's accelerating at a remarkable rate. She noted that small operators are doing such a minimal amount in business and can't find a way to get people in their doors. Ms. Porter advised that

Lotto has people selling the program; when people buy groceries, the clerks are supposed to ask if they want their change back in tickets. She questioned if that was promoting gambling. She believed the issue should be addressed, and either do away with promotions or define where the line will be drawn.

Senator Prentice affirmed this is something the Legislature may need to look at. It may not be that difficult to pass because there is a lot of sympathy for little communities, particularly those who don't have the opportunity to consider the moratorium or the slow down in granting other licenses.

Bob Tull, Attorney, spoke on behalf of some non-gambling business clients. He suggested that if the Commission embarked on this rulemaking process, they would find it to be enormously more complex than has been suggested. He believed the proposal rewrites the statute and he didn't believe that is what this Commission sets out to do. Mr. Tull believed it would have more of an effect than the Commission realizes and that it goes way beyond bacon bingo or licensees promoting gambling. He believed it would bring in a lot of new players into the debate, and may change the way some very large businesses do business in this state.

Director Bishop repeated that he did not want to regulate promotional contests of chance. The rule (46.050) is doing exactly that – regulating. Director Bishop stated that when things such as values are placed on prizes, and time limitations are placed on activities that can be done, and their frequency – those are regulatory functions and would move the agency back into approving these functions, requiring reviews to see if they are being conducted correctly.

Director Bishop also addressed promotional materials and noted they are merely interpretations. Whether or not someone can use gambling devices that aren't otherwise authorized is another issue. Bingo paper cards themselves are a controlled item, and the removal of the restriction for low-level promotional-type activities has been proposed. Director Bishop clarified that he did not wish to remove the restrictions on punch boards, pull tabs, slot machines, or anything along that line. He again emphasized that several things in the .035 rule are merely for interpretation, they have evolved over the years, and can be challenged. Director Bishop noted that staff doesn't have the authority to authorize anything, only the Legislature can do that. He affirmed if a business engages in activities other than what is allowed by statute, the business would be viewed as violating the gambling laws of Washington. Because the Commission does not regulate promotional games of chance, their course of action would be to get an injunctive action or to bring criminal charges. He affirmed the first two rules are much larger than bacon bingo and reiterated his personal desire not to endorse the rule under "C" that regulates no fee bingo.

Don Kaufmann, Big Brothers/Big Sisters of Spokane indicated that he understood the arguments on both sides of the issue. He endorsed the position of the WCCGA. He reminded the audience that anytime there is a regulated activity and it is allowed to be unregulated at the same time, it will cause problems. He stressed the need for controls. Mr. Kaufmann affirmed that no one has a problem with bacon bingo, or the \$10 and \$25 prizes, or the time limitations. The issue is what's to keep a larger facility that is making big bucks in house-banked blackjack from offering trips to Reno or offering a monthly prize of a car. He asked the Commission if they wanted to wait until this becomes a problem, or if they wished to tackle it while it is controllable and while people are asking for something reasonable.

Commissioner McLaughlin asked how long no-fee Bingo had been in existence. **Director Bishop** advised it was first approved in 1997. **Ms. Patjens** agreed and noted that it is also allowed in other states. **Commissioner Forrest** inquired if the people who had asked for the Commission's approval were licensees. **Ms. Patjens** said they were not just licensees, there were other businesses that the agency does not license, which is why she favors having everything in one rule where people can easily determine what is allowed.

Chair Ludwig recessed the meeting at noon and reconvened the session at 12:15 p.m. Commission members present: Commissioner's Herbold and McLaughlin, and Ex-Officio member Senator Prentice.

Stephen Strand, of Big Brothers/Big Sisters of King County, stated that he supported the WAC in question and also supported the WCCGA's position. He expressed concern and questioned why there's trouble distinguishing between bingo (a highly related gambling activity), bingo cards (a regulated gambling device), and all other promotional activities. He noted that in his environment he can't give away a cup of coffee, and yet the activity he relies on for fundraising is being offered at no charge at hundreds of additional locations. He believed that if we continued without restrictions there would be a serious dilution in the capability of organizations such as his to raise money.

Commissioner McLaughlin asked why a non profit entity couldn't give away a cup of coffee. **Director Bishop** replied that it had to do with the proper use of funds (and certainly a cup of coffee doesn't get to that level). However, if an organization wanted to give away a Cadillac it would be a problem. The other concern, and one of the reasons for the decision to have restrictions was because promotions typically perpetuate more promotions. If Operator A gives coffee, the guy next door will give coffee and doughnuts, and the guy next to him will give coffee, doughnuts and a deli sandwich.

Nick Peck, Silver Buckle Radio Club, asked a technical question regarding RCW 9.46.0205, which offers a definition of bingo. He asked if promotional bacon bingo was considered to be bingo, or is it a separate phrase describing a separate activity. If it is Bingo, then the definition as he interpreted it in the RCW, confines it to non profit organizations. **Mr. McCoy** informed the group that it is not technically bingo because bingo is a defined term. Bacon bingo as it is defined in the rule, is a contest of chance similar to bingo, it follows the rules of the traditional game, but is not bingo as defined in the statute. Mr. McCoy affirmed this was an issue that came up a number of years ago. **Chair Ludwig** asked if they were talking about promotional contests regardless of whether they're called bingo or something else. Mr. McCoy affirmed and noted it's the concept, and there is a distinction between a promotional contest and a commercial stimulant activity.

Chair Ludwig noted that **Commissioner Forrest** previously made a motion seconded by **Commissioner McLaughlin** to file the proposed rule. Vote taken; motion carried with three ayes. (Commissioner Forrest was absent).

6. Age Limit to Participate in Gambling Activities.

Ms. Patjens advised these rules were up for discussion and possible filing. They address two areas; age limits on gambling, and giving away liquor as prizes. This started as a housekeeping change. The issue was raised because the question was asked whether kids could be in a card room area when the cards were being played. The answer was buried in another rule that had the heading of "no beer or liquor as prizes." If liquor was offered where the gambling activity occurred, then no one under 18 could be in that part of the business.

Ms. Patjens noted this action takes the rule and splits it into two rules. Item 6a sets forth the age limits for gambling, which is usually 18, with a few exceptions – people who are under 18 can play bingo with their parents or guardian in a licensed bingo establishment. She also addressed changes that were made to this rule. Item 6b clarifies when a business can offer alcohol as a prize. Usually a business can't do this, but there are some exceptions identified in subsection 2. The agency worked on these rules with the Liquor Control Board because there was some overlap between what they do and what the Commission does. Item 6c repeals the old rule because the age limits are now rewritten in Item 6a. Ms. Patjens noted there are two versions of the rule; one in a question and answer format and the other in the standard format customarily used for rules. She pointed out that the Commission had taken public comment on the desirability of having a question and answer format when this was discussed in April of 1998. Staff recommends filing the rules.

John Beadle, Seattle Junior Hockey, affirmed the question and answer format is very useful. He noted his office receives many questions, and the question and answer format makes it very easy to follow the rules. **Chair Ludwig** stated that if these rules are filed, he would appreciate Mr. Beadle mentioning this again for the benefit of Commissioner Forrest who had a special interest in this area.

Commissioner Herbold stated that she personally did not care for the question and answer format. She believed it would be as helpful on the longer rules to have the headings in bold type instead of the question format. For example, **Age Requirement** -- instead of the question "How old do I have to be?" Mr. Beadle said that was fine. With no further comments, **Chair Ludwig** closed the public hearing.

Commissioner Herbold made a motion seconded by **Commissioner McLaughlin** to file the proposed rules, Items 6a through 6c for further discussion. Vote taken; motion carried with three ayes.

7. Other Business/General Discussion/Comments from the Public.

Discussion of Video Pull Tabs for Charitable and Non Profit Organizations.

Chair Ludwig advised the Commission had received the Attorney General's opinion on this issue and called for discussion. **Commissioner Herbold** noted that she had talked to Commissioner Forrest before he left and asked him if he wanted to convey any comments. His response was, "In my opinion it's all of a piece." **Commissioner McLaughlin** asked what he meant by that. **Commissioner Herbold** believed Commissioner Forrest was referring back to the several opinions they had with respect to the tribal machines. The first opinion from the Attorney General's Office was that the machines were illegal, the second AG opinion said they were legal, and this opinion, (using the same arguments) advises the machines were illegal. Commissioner Herbold affirmed it was very confusing and she felt the Commission had been asked to approve an illegal machine during the "Friendly Lawsuit" situation. Reading this opinion, Commissioner Herbold believed the AG had totally reversed himself with respect to his arguments and that the Commission, using these same arguments, approved a machine that he is now saying is illegal. Commissioner Herbold emphasized that she found this very disturbing.

Commissioner McLaughlin said she read the opinion and looked at it differently. She interpreted it to mean that the Commission did not have the authority to issue a video pull tab machine to anyone else and the AG just said "No, we do not have the right to do that." The machines the tribes were authorized are covered under the Lottery Act. Commissioner McLaughlin believed the only way this could be ironed out is through the Legislature. **Chair Ludwig** indicated that both interpretations may be right. He agreed with Commissioner McLaughlin that the machines were authorized -- through proper negotiations with the tribes. He affirmed that scratch tickets were a form of gambling conducted in this state by the state. However, the question that he believed the AG answered this time, was that under the Lottery Act, no one else is authorized. The question is, if the Commission can do video scratch tickets because the Lottery has them, why can't they do video pull-tabs? Commissioner McLaughlin pointed out that the Indian Tribes are another government -- they are not in the category as a commercial or a non profit enterprise of the state of Washington. Tribes are considered another government. Chair Ludwig noted that in any event, the Commission has an AG's opinion by which they are bound, unless a court in a proper case should overrule it. **Mr. McCoy** affirmed it is binding.

Senator Prentice indicated this was the crux of the question -- could the Gambling Commission, in effect, set policy, or was that a problem for the Legislature. She recalled that at the last hearing the Senate had on this whole issue, they didn't have the AG opinion in hand. Senator Prentice emphasized that it is clearly the function of the legislature to set policy. She thought the AG's opinion was very timely and expressed her appreciation for the thoroughness. Senator Prentice felt the next step would be to get the Legislature to act on this issue if they wished.

Chair Ludwig asked if anyone else wanted to speak on this matter. No other comments were offered.

Issue of Phase II Reviews and Temporary Relief:

Director Bishop noted this was discussed at length yesterday and various suggestions were made. Director Bishop proposed two options. The first, wait until next month for staff to bring a proposal to the Commission about ways they can help this situation. He emphasized that staff was not ready to make a decision today. The second option would be to grant the staff the authority to develop and implement interim requirements, such as placing limits between Phases I and II. He stressed the need for adequate time to assess the risks associated with the interim rules/requirements.

Commissioner McLaughlin noted that even though businesses have \$25 limits, they are still under review all the time. Director Bishop affirmed that there is at least one visit every two weeks for each business under review. Some places have once a week reviews. During the Phase II review, he believed agents would be in the business to do some work at least every two weeks.

Commissioner Herbold noted the reason the Commission took action not to pass the permanent rules and extend the test program for a period of time, and to limit the number of Phase II approvals, was at least partly in response to the letter from the Governor asking them to slow things down. **Commissioner McLaughlin** believed the Governor was speaking more to the people entering the program, rather than how the Commission regulated the existing licenses.

Chair Ludwig opened the discussion for public comment.

Bob Brennan, Royal Casino, appreciated the opportunity to speak about the concerns and burdens placed on the businesses that should be at Phase II. He noted that because of the strain on the staff, progress has slowed down considerably. This has put a financial hardship on the card room owners. They knew when they entered the test program that there were two separate phases, and they fully anticipated they would be able to recoup their investments once they got into the second phase. The RGA strongly urged the Commission to consider that if the business has been in compliance for the first six months and there are no investigations pending; they be allowed to take one-third of their tables to the \$100 limit. The reason for one-third, is that it provides the same competitive advantage as somebody who is already at \$100. Simultaneously, staff would keep the process of Phase II approval moving forward as fast as they possibly can. Mr. Brennan also supported staff's consideration to bring in an accounting or consulting firm to help them get caught up. This would be a win-win for everyone.

In summary, Mr. Brennan believed this would allow business to reserve and preserve market share; it gives relief to the owners financially; it gives the staff some needed help; and gives the staff a chance to catch their breath. Mr. Brennan urged strong consideration of this proposal, as quickly as possible, noting the physical and financial viability of these businesses are dependent upon a quick resolution. **Chair Ludwig** called for other comments. Hearing none, he closed the public hearing section.

Chair Ludwig summarized Director Bishop's proposed two options. Give staff until the next meeting to develop something; or delegate the authority to the Director during the interim, to let those that are otherwise eligible for Phase II and not able to get there because of staff demands, to go up in part by increasing the fee to \$100 or something less. Chair Ludwig advised he was in favor of giving the Director such discretion because he already had discretion under the pilot program to do other modifications. Chair Ludwig apologized for creating the pressures and demands on staff and for the delays that the businesses have experienced. He noted that if the Commission were to go back to square one, he believed the pilot program would be limited to 15 or 20 businesses spread throughout the state. Chair Ludwig expressed his desire to proceed in as fair a manner as possible. **Commissioner McLaughlin** agreed that the Director should have the right to make the decision during the interim.

Commissioner McLaughlin made a motion seconded by **Commissioner Herbold** "to give the Director the right to make decisions on whether the licensee has met the Phase II criteria and that it go into place immediately."

Commissioner Herbold questioned if this would be the discretion to increase the betting limits and the tables partially, or to do the whole thing. (15 tables at the \$100 limit without coming to the Commission). **Commissioner McLaughlin** supported the 1/3 option, noting it would be the Director's prerogative if he thought \$50 would be the right way. It was clarified that the Commission was not talking about 15 tables all at the \$100 limit.

Commissioner Ludwig restated the motion. The Director be authorized to implement a partial increase either in the number of tables or wagered limits for those card rooms operating at Phase I and otherwise

eligible to go to Phase II, but unable to because of inadequate time for staff (with other duties) to complete the necessary Phase II reviews.

He interpreted this to mean: Phase II requirements would still be in effect and the licensee would have to do the Phase II review successfully. Director Bishop noted this should also include that there will be restrictions, staff will have input on whether the licensee is ready. The Commission affirmed that card rooms must be in compliance, these will be approved on an individual basis and with whatever requirements the Director deems appropriate.

Vote taken: motion carried with three aye votes.

Senator Prentice asked when the pilot program would end. **Director Bishop** replied, March 31, 2000, is the current target date. Senator Prentice expressed concern that there be a date certain time when the test program would end. She hoped that the agency would not continue to appeal to the Governor's office to extend the program because there were those who were unable to participate in the program. Senator Prentice noted that the rules got changed, and she believed the program is unfair to those who were cut out of the opportunity to participate. She hoped they could be given a date they could count on for their ability to participate. **Chair Ludwig** explained that it was his understanding that even if the list were still open as such, those who were unable to be processed in the program would be no farther ahead or behind, because the list will not be exhausted by the time permanent rules are adopted.

Director Bishop advised that it was the agency's plan to continue to work with the rules that were proposed earlier and have been incorporated into the contract. Staff will also continue to work with the licensees. He cautioned there will still be a need for some transition. Licensees remaining on the list will be processed, however, additional applicants will be accepted and will be processed routinely as fast as possible. Director Bishop said he did not anticipate being able to process 40 new applicants by March of 2000.

Staff will bring forward a rule packet at the January meeting, running concurrent with the legislative session, with the intent to vote on them at the March Commission meeting. Rules adopted would have an effective date of April, 2000.

Cecilia Voght, Executive Director, Yakima Greenway Foundation, expressed her appreciation for the work that staff and the Commission have put into this program. She acknowledged it is difficult to make decisions that seem fair to everyone. Ms. Voght invited staff, the Commission and legislative representatives to visit her facility located at 1118 South 18th Street, in Yakima, at their next meeting -- and to see how very important bingo dollars are to her community.

8. Adjournment

With no further business, a motion for adjournment prevailed at 1:00 p.m.

Minutes submitted to the Commission for approval.

*Shirley A. Corbett,
Executive Assistant*